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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,068	09/07/2000	Kenneth M. Buckland	062891.0362	1585

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER

WILSON, ROBERT W

ART UNIT	PAPER NUMBER
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2619

NOTIFICATION DATE	DELIVERY MODE
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12/05/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/657,068

Applicant(s)

BUCKLAND, KENNETH M.

Examiner

Robert W. Wilson

Art Unit

2619

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 3-7, 9-16, 18-33 & 35-38, & 40.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

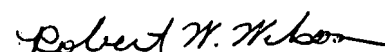
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.



Robert W Wilson
Examiner

Art Unit: 2619

11/30/07

Continuation of 11. does NOT place the application in condition for allowance because: The examiner respectfully disagrees with the applicant's argument that the 112/1st paragraph rejection has been traverse. The The examiner believes that the applicant's invention has packet (layer 3) encapsulated in a frame (layer 2). The frame has a layer 2 destination address and the packet has a layer 3 destination address. Applicant's frames are aggregated at the layer 2 level and sent to the internet at the layer 2 level where they are de-encapsulated and routed at the layer 3 destination address. The examiner read the applicant's specification Pg 13 lines 3-28 but does not believe that this section of the specification is enabled. Aggregating packets without regard to any destination address including the layer 2 address is physically impossible and not enabled.

The examiner respectfully disagrees with the application argument that the reference Keller Tuberg does not teach "aggregating the ingress traffic without regard to any destination of any packet from any ingress traffic stream". The destination address referred to in the claim is associated with a packet so the destination address is a layer three destination address. Clearly one of ordinary skill in the art knows tha frames are at layer 2. Applicant does not mention anything about the layer 2 level. Kellerg Tuberg teaches: "aggregating ingress traffic without regard to any destination of any packet from any ingress traffic stream" (The packets (layer 3) are encapsulated in ATM and aggregated without regard to the destination address (layer 3 destination address) and sent in ATM cells (layer 2) to the Internet where they are de-encapsulated into IP packets (layer 3) and routed in the Internet by routers based upon the IP destination address). The examiner disagrees with the applicant's argument that "multiplexing" needs to be shown by the reference because multiplexing is not in the claim language.